IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2003

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THE HONOURABLE MR.JUSTICE A.KULASEKARAN

C.R.P.PD.No.235 OF 2003
and
C.M.P.No.1763 OF 2003

S.G.Badrinath,
by Power of Attorney
C.G.Swaminathan ... Petitioner

-Vs-

1.V.Jagannathan

2.Ramaniyam Real Estates Pvt. Ltd.,
rep.by its Managing Director,
D.No.11, 2nd Main Road,
Gandhi Nagar, Chennai-20. ... Respondents

For petitioner : Mr.T.R.Rajagopal, Sr.Counsel,
for Mr.R.Nandakumar

For respondents: Mr.S.Sundaresan

Revision against the order dated 24.09.2002 made in I.A.No.1071 of 2
001 in O.S.No.1279 of 1998 on the file of the Additional Subordinate Judge,
Coimbatore.

:O R D E R

Plaintiff is the petitioner herein, who has filed the suit in O.S.
No.1279 of 1998 on the file of Sub-Court, Coimtatore, for recovery of
Rs.29,64,000/-, with interest and costs, against the respondents herein.

2. Respondent herein filed an application in I.A.No.1071 of 2001
under Order 14 Rule 4 and Section 151 of C.P.C., praying to decide the
preliminary issue as to whether the said Court is vested with the territorial
jurisdiction to try the said suit, as this Court, in C.R.P. No.1513 of 1997,
directed to decide the same.

3. The trial Court, after affording an opportunity to the parties,
allowed the petition, holding that it is not vested with the territorial

jurisdiction. Hence, the present revision.

4. Mr.T.R.Rajaraman, learned Senior Counsel, appearing for the petitioner has submitted that the petitioner agreed to purchase the property in Coimbatore and approached the first respondent herein at his Coimbatore office, paid the amount and entered into an agreement; later, they found some defect in the title of the property and, hence, the agreement was cancelled, but the respondent failed to return the amount; the initial cause of action, namely, offer of the first respondent to sell the property located in Coimbatore and acceptance of the petitioner to purchase the same arose at Coimbatore; hence, Coimbatore Court alone is vested with the jurisdiction and not the Chennai Court.

5. The learned Senior Counsel further submitted that the trial Court erroneously thought it was only a suit for recovery of amount, without taking into account the initial cause of action, which arose at Coimbatore. He also submitted that, as against the impugned order, Civil Revision Petition under Section 115 of the Code of Civil Procedure is maintainable.

6. In support of his contention, the learned Senior Counsel relied upon a decision of the Supreme Court in Shiv Shakti Co-operative Housing Society, Nagpur, v. M/s.Swaraj Developers and others, reported in 2003 (2) M.L.J. 170 (S.C.)

7. Per contra, Mr.S.Sundaresan, learned counsel appearing for the respondents, has submitted that the suit is only for recovery of money simpliciter; Power of Attorney of the plaintiff is residing at Chennai; the respondents are also carrying on business at Chennai; the initial agreement was entered into at Chennai; the amount was paid at Chennai, and hence, the Court at Chennai is competent to try the case.

8. It is also submitted by the learned counsel that, as per the direction of this Court in C.R.P.No.1513 of 1997, the trial Court was directed to try the jurisdiction question as the preliminary issue and, accordingly, the same was decided, holding that the Court at Coimbatore does not have the territorial jurisdiction. The learned counsel further added that the revision filed against the order of the trial Court is not sustainable, since it is only interim in nature and did not finally decide the lis. Accordingly, he prayed for dismissal of the revision.

9. Order 14 Rule 2 of C.P.C.reads as follows :

"Court to pronounce judgment on all issues.-(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

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(a) the jurisdiction of the Court, or
(b) a bar to the suit created by any law for the time being in force,
and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

10. Under Rule 2, Order 14 of C.P.C., where the issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of other issues of fact until after those issues of law have been determined.

11. A comparative reading of Order 14 Rule 2, as it existed earlier to 1976 Amendment and the one after Amendment, would clearly indicate that the consideration of an issue and its disposal as a preliminary issue has, after the 1976 Amendment, been made permissible only in a limited case. Those issues are of law relate to (i) the jurisdiction of Court, or (ii) a bar to the suit created by any law for the time being in force. Apart from this, no issue can be tried as a preliminary issue.

12. Where the Court came to the conclusion that there is a pure question of law to be decided as a preliminary issue, the order, refusing to decide the preliminary issue on the mere ground that the Court did not favour dispose of the suits on preliminary points is not justified and is liable to be interfered with under appropriate provisions of Law.

13. No doubt, the issue relating to jurisdiction of a Court has to be tried as a preliminary issue. In this case, the trial Court was directed to decide the said issue of jurisdiction, by an order of this Court in a Civil Revision Petition.

14. Issue at jurisdiction of a Court could not be said to be purely an issue of law, some cases issue involved mixed questions of fact and law. Merely because some evidence was required to be taken an issue could not be refused to be tried as preliminary issue such as an issue regarding jurisdiction or maintainability of suit or court fee. However, courts could try issue as preliminary issue only if the facts are independent and self-contained and do not have any bearing on the facts which may arise for consideration of the suit.

15. In this case, both oral and documentary evidence were let in by the parties. The trial Court applied its mind and came to the conclusion that it is not vested with the jurisdiction. I am, at this stage, not expressing any opinion on the allegations made by the petitioners and respondents are true. I am only concerned to point out that what is regarded as preliminary issue as to the jurisdiction of the Court has been decided perfectly or not. Materials placed before the trial court, in particular Ex.A9 and A10, which were executed at Madras, the fact that power of attorney of the plaintiff and the defendants are residing at Madras and the relief sought for is recovery of money simpliciter were made it to reach the right conclusion that it was not

vested with the territorial jurisdiction. I do not find any infirmity in the said order.

16. The expression 'order' has been defined in Section 2 (14) CPC. It means the formal expression of any decision of a civil Court which is not a decree. The order passed Under Order 14 Rule 2 is an interlocutory order by way of an aid to the proper adjudication of the claims and disputes arising in the suit itself, but does not determine the right of the parties conclusively.

17. As against the said impugned order, the revision has been preferred, invoking the jurisdiction of Section 115 of C.P.C. Now, I proceed to consider as to whether revision is maintainable as per the amended Act No. 46/1999 with effect from 01-07-2002 in Section 115 CPC.

18. Section 115 of C.P.C. reads as follows :
Section 115 (before Amendment) : (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-
(a) to have exercised in a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested, or
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit :

Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or order proceeding, except where-
(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or
(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.
(2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
Explanation : In this Section, the expression "Any case which has been decided : includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

Section 115 (after Amendment) : (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-
(a) to have exercised a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested.
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit :
Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue in the course of a suit or order proceeding, except where the order, if it had been made in favour of

the party applying for revision, would have finally disposed of the suit or other proceedings.
(2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.
Explanation : In this Section, the expression "any case which has been decided" includes any order made, or any order deciding the issue, in the course of a suit or other proceeding."
19. The reading of Section 115 CPC as now stands makes it clear that no revision lie if the impugned order is of interim in nature and not finally decide the lis. In the case on hand, the application under Order XIV Rule 2 has been allowed by the trial court, which has not brought the suit to an end. Whether the impugned order could be considered as a proceeding. No definition is available for the word proceeding in CPC. The word proceeding in general sense means the form and manner of conducting judicial business before a Court. The meaning of the word proceedings depends upon the scope of enactment wherein the expression is used with reference to the particular context where it occurs. It is not a technical expression with definite meaning (K.J. Lingam and A.V. Mahayalam and others Vs. Joint Commercial Tax Officer, Mount Road Dn. and another) AIR 1968 Madras 76 wherein in Para-7 it has been held thus:-

".... Therefore, the meaning to be attributed to the word ' proceeding' would depend upon the scope of the enactment wherein the expression is used and with reference to the particular context wherein it occurs.....

A proceeding may in some enactment means an action or that which initiates an action and in other enactments it may also mean a step in an action.... the word 'any proceeding' in S.69 of the judicature Act, 1878, was understood to be equivalent to any action. But in the rules of the Supreme Court, Order 64 Rule 13, 'proceeding' is used as meaning a step in an action... 'Any other proceeding in the action' in the rules of the Supreme Court, Order 26 Rule 1 mean any proceeding with a view to continuing the action i.e., a step forward, not one backward....."

The Honourable Supreme Court in the decision reported in (Babu Lal Vs. M/s. Hazari Lal Kishori Lal and others) AIR 1982 Supreme Court 818 , in para-17 held thus:-

"17. The word 'proceeding' is not defined in the Act. Shofter Oxford Dictionary defines it as 'carrying on of an action at law, a legal action or process; any act done by authority of a Court of law; any step taken in a cause by either party'. The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression, with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is

conducted. The word ' proceeding' in S.22 includes execution proceedings also. In Rameshwar Nath V. Uttar Pradesh Union Bank Ltd., AIR 1956 ALL 586 such a view was taken. It is a term giving the widest freedom to a Court of Law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation, there are various stages. One of them is execution."

In the decision reported in (Ram Chandra Agarwal and another Vs. The State of Uttar Pradesh and another) AIR 1966 Supreme Court 1888 it was held thus:-

"The provisions of Civil P.C. would apply generally to a proceeding before a Civil Court arising out of a reference to it by a Magistrate under S.146 (1) of the Criminal P.C. The expression 'proceeding' used in S.24 Civil P.C. is not a term of art which has acquired a definite meaning. Looking to the context in which the word has been used in S.24 (1) (b) of the Civil P.C. it would appear to be something going on in a Court in relation to the adjudication of a dispute other than a suit or an appeal. Bearing in mind that the term 'proceeding' indicates something in which business is conducted according to a prescribed mode it would be only right to give it a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone. A proceeding before a civil Court arising out of a reference to it under S.146 (1) Criminal P.C. can be transferred by the District Court under S.2 4 Civil P.C. because it is in any case a 'proceeding' AIR 1961 Madras 247. Ref."

20. It is seen from the above judgments that the term proceeding is not a term of art which has acquired a definite meaning. Looking to the context in Section 24 (1) (b) of CPC it would appear to be something going on in a Court in relation to the adjudication of a dispute other than a suit or appeal. The impugned order under Order 14 Rule 2 cannot be construed as proceedings, which is procussal i.e., interloctuary or incidental order regulating proceedings but not finally deciding the suit. The word proceedings is applied for the purpose of Section 115, the order under Order 14 Rule 2 is not an order finally deciding the lis, hence the revision is not maintainable.

21. The Hon'ble Supreme Court in Shiv Shakti Co-operative Housing Society, Nagpur, v. M/s.Swaraj Developers and others, reported in 2003 (2) M.L.J. 170 (S.C.), held thus :
"8. A comparison of two provisions shows that while proviso (a) of the unamended provision has been retained in its totality, in the amended provisions, Clause (b) of the proviso has been omitted.

9. It is to be noted that prior to the amendments to the Code by the old Amendment Act, the power of revision was wider. By the amendment, certain positive restrictions were put on the High Court's power to deal with revisions under Sec.115. Prior to the said amendment, it was not strictly

necessary that the impugned order would have the result of finally deciding the lis or the proceedings in the lower Courts. In fact, the power could be exercised in any case where jurisdictional error was committed by the original Court or where substantial injustice had resulted. By the old Amendment Act, the condition of finally deciding of lis and the proceedings in the subordinate Courts was introduced. the proviso which was introduced contains qualifications which are pre-requisites before exercise of power under Sec.115 . They were Clauses (a) and (b) of the proviso. Logically, the High Court has suo motu power to revise an order where total failure to justice would have occasioned or where irreparable loss would have caused to the parties against whom it was made. These powers were retained by Clause (b). Though, after 1976, the exercise of power was somewhat circumscribed, it was not totally curtailed. In other words, the High Court could even after the 1976 amendment interfere in cases where there was failure of justice or irreparable loss caused, the nature of the proceedings was substantially changed and the suo motu power of the High Court was retained. It was in the nature of power of superintendence of the High Court over the subordinate Courts. Changes were related to indicating limitations in exercise of power.

14. Section 115 is essentially a source of power for the High Court to supervise the subordinate Courts. It does not in any way confer a right on a litigant aggrieved by any order of the Subordinate Court to approach the High Court for relief. The scope for making a revision under Sec.115 is not linked with a substantive right.

32. A plain reading of Sec.115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceedings. If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Sec.115. There is marked distinction, in language of Section 97 (3) of the old Amendment Act and Sec.32 (2) (i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Sec.32(2) (i). The amendment relates to procedures. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation."

22. In the said decisions, it is made clear that revision is maintainable only if lis is finally decided, order which are interim in nature cannot be subject matter of revision under Section 115 after statutory change.

23. For the foregoing reasons, I dismiss the revision. No costs. The trial court is directed to return the plaint to the Plaintiff forthwith, on receipt of a copy of this order and on receipt of the same, the Plaintiff is directed to present it before the appropriate Court within two weeks

thereafter. Connected CMP is closed.

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